

Serial No. 09/855,971
Docket No. NEC N01268
Amendment F Under Rule 116

REMARKS

The rejection of claims 1-4, 6-8, 13-15 and 19-30 under 35 USC §102(e) as being anticipated by US Patent No. 6,738,978 to Hendricks et al is in error. A claim is only anticipated if the identical invention is "shown in as complete details as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Further, "the elements must be arranged as required by the claim." In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). See also MPEP 2131. The Examiner's present rejection is based on cherry-picking individual elements from the several embodiments of Hendricks, and assembling the elements together in a manner neither taught by nor suggested by Hendricks.

Independent claim 1 requires, in part, "an advertiser terminal to distribute ... each of said plurality of said commercial message materials over a same channel frequency and during a same time period". Independent claim 20 contains similar although not identical language. Independent claims 13 and 27 require, in part, "distributing a plurality of commercial message materials ... over a same channel frequency and during a same time period from an advertiser terminal." At page 2 of the Action, the Examiner stated, "the disclosed Split Screen method [of Hendricks] ... is specifically directed to transmitting multiple advertisements at the same time, over the same frequency." However, as the term 'Split Screen' implies, this embodiment of the Hendricks invention does not choose, as required by claim 1 (and claims 13, 20, and 27, in immaterially varying language), "the one commercial message material out of said plurality of said commercial message material fed ... to expand and display images of the one commercial message materials." The Split Screen method of Hendricks shows all of the commercial

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.0667

Serial No. 09/855,971
Docket No. NEC N01268
Amendment F Under Rule 116

messages in a split screen format (see Col. 40, lines 13-34). As the reference does not have the elements of the claims "arranged as required by the claim", Hendricks fails to anticipate claims 1, 13, 20, and 27.

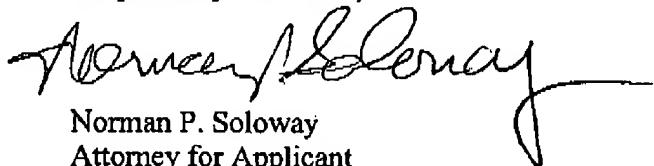
Claims 2-4, 6-8, 14, 15, 19, 21-26, and 28-30 depend from claims 1, 13, 20, or 27, as the case may be, and are allowable for the reasons above adduced relative to claims 1, 13, 20, and 27, as well as for their own additional limitations.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance.

The foregoing Amendment makes no claim changes and thus should be entered as a matter of right.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

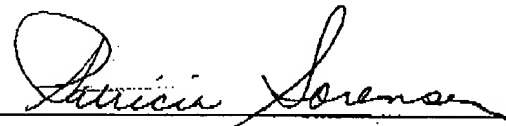
Respectfully submitted,



Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

CERTIFICATE OF TRANSMISSION VIA FACSIMILE

I hereby certify that this correspondence is being sent via facsimile to EXAMINER Jade O. Lave of the United States Patent and Trademark Office at facsimile number (571) 273-8300, on September 6, 2007, from Tucson, Arizona.

By 

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567